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15:05:00 1 again, that's a conversation between the person and  
15:05:05 2 a doctor.

15:05:06 3 **Q.** Did you expect that Mr. Kistner, given  
15:05:08 4 the behaviors that he had exhibited primarily at  
15:05:11 5 ECMC the first time, was going to be admitted?

15:05:13 6 **A.** I -- that's up to the doctor to  
15:05:15 7 determine.

15:05:15 8 **Q.** Okay. Well, my question was: Did you  
15:05:17 9 expect that he would be admitted, based on your  
15:05:19 10 past experience dealing with ECMC's CPEP, 941s, and  
15:05:24 11 involuntary admissions?

15:05:25 12 **MS. HUGGINS:** Form.

15:05:26 13 **THE WITNESS:** I wouldn't -- I wouldn't  
15:05:26 14 always be there. It -- it would depend on if the  
15:05:28 15 person is in custody.

15:05:30 16 If they're in custody, then I would be there  
15:05:32 17 when they speak with the doctor, and the doctor  
15:05:33 18 would determine whether they would be admitted or  
15:05:35 19 not.

15:05:35 20 **BY MR. RUPP:**

15:05:35 21 **Q.** Okay. But my question, again, ma'am,  
15:05:37 22 was: Do you believe that he was going to be  
15:05:40 23 admitted when you dropped him off there?

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15:05:41 1           **A.**     I'm not a medical professional.

15:05:43 2           **Q.**     Okay. Did you believe he was going to  
15:05:45 3 be admitted or not?

15:05:45 4           **A.**     I don't know.

15:05:46 5           **Q.**     Okay. You had -- you had no opinion  
15:05:48 6 one way or the other?

15:05:48 7           **A.**     It's not for me to determine.

15:05:50 8           **Q.**     Did you care?

15:05:51 9           **A.**     It's -- I mean, care in terms of?

15:05:54 10          **Q.**     Yeah. Did you -- did you wish that --  
15:05:56 11 one outcome versus the other?

15:05:58 12                 Did you want to see him admitted, or did you  
15:06:00 13 want to see him go home?

15:06:02 14          **A.**     I think that he needed help and that's  
15:06:04 15 what I wanted him to get.

15:06:06 16          **Q.**     Okay. So you would have liked to  
15:06:07 17 see -- you would have liked to have seen him  
15:06:11 18 admitted.

15:06:11 19          **MS. HUGGINS:** Form.

15:06:12 20          **THE WITNESS:** I wanted to see him get help.

15:06:14 21          **BY MR. RUPP:**

15:06:14 22          **Q.**     Okay. And you took him to ECMC psych  
15:06:16 23 ward to get that help, right?

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15:06:18 1           **A.**     Yes.

15:06:18 2           **Q.**     Okay. All right. So you and  
15:06:21 3 Officer Velez, according to 4A, at a certain  
15:06:25 4 point -- at 6:16 p.m., the dispatch adds the crime  
15:06:32 5 report archive, and you said they can sometimes  
15:06:34 6 just add that at a later time to close out, so  
15:06:37 7 you're not sure that that's when you told them:  
15:06:41 8 We're done?

15:06:41 9           **A.**     Right. Generally, the disposition for  
15:06:42 10 an arrest would be arrest, so that's why --

15:06:45 11           **Q.**     Okay.

15:06:45 12           **A.**     -- I believe that maybe the dispatcher  
15:06:47 13 just put that in to close it out.

15:06:49 14           **Q.**     So that's -- that's not technically  
15:06:51 15 then the -- the best or most accurate --

15:06:53 16           **A.**     You --

15:06:54 17           **Q.**     -- closeout disposition?

15:06:56 18           **A.**     You can put multiple dispositions in.

15:06:58 19           **Q.**     Yeah.

15:07:00 20           **A.**     Again, if -- if I'm doing it manually  
15:07:02 21 on the computer, I can add, you know, the  
15:07:05 22 disposition, but if I call it out to radio, they  
15:07:08 23 might put that or something else, or the

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15:07:10 1 dispatchers do sometimes take it upon themselves to  
15:07:14 2 just --

15:07:14 3 Q. Yeah.

15:07:14 4 A. -- close out the call.

15:07:15 5 Q. Yeah. And you -- you told me that  
15:07:17 6 earlier, and I appreciate it. I'm really asking  
15:07:19 7 more to try to figure out like when you and -- and  
15:07:22 8 Velez checked out and ended your shift.

15:07:23 9 You arrived on scene at ECMC, according to  
15:07:26 10 dispatch, at 4:26 p.m., and according to what you  
15:07:30 11 just told me, you kind of dropped him there and --  
15:07:33 12 and left him.

15:07:34 13 Do you think you would have been there for  
15:07:37 14 beyond 1700, another 15 minutes, or do you think  
15:07:40 15 you were kind of went there, dropped him, and left?

15:07:41 16 A. I don't remember how long we were  
15:07:43 17 there.

15:07:43 18 Q. Okay. But if you stayed, you wouldn't  
15:07:46 19 have talked to anybody, because I think you already  
15:07:48 20 told me you didn't, right?

15:07:49 21 A. Well, it's -- we don't just open the  
15:07:50 22 door and drop him off. That's --

15:07:52 23 Q. So you do talk to people?



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15:07:53 1           **A.**     Yes.

15:07:53 2           **Q.**     Okay.  So, well, did you tell them  
15:07:55 3 orally, beyond what was contained on the form, you  
15:07:58 4 know, why you're dropping him off?

15:08:01 5           **MS. HUGGINS:**  Form.

15:08:04 6           **THE WITNESS:**  I don't remember.

15:08:04 7           **BY MR. RUPP:**

15:08:05 8           **Q.**     Okay.

15:08:05 9           **A.**     I don't remember if we went through the  
15:08:07 10 check-in process, or I -- I -- I don't remember.

15:08:09 11           **Q.**     Well, did you ever speak to  
15:08:10 12 a psychologist or a psychiatrist at ECMC about why  
15:08:12 13 you were bringing Mr. Kistner there?

15:08:14 14           **A.**     I don't remember.

15:08:15 15           **Q.**     Not an intake person or a nurse but an  
15:08:17 16 actual doctor.

15:08:18 17           **A.**     I don't remember.

15:08:19 18           **Q.**     Okay.  Do you know if Ms. Velez did?

15:08:21 19           **A.**     I don't know.

15:08:22 20           **Q.**     Okay.  All right.  And until the time  
15:08:27 21 you were served with the summons and complaint in  
15:08:31 22 this case, was your departure from ECMC at the time  
15:08:34 23 of the second visit the last experience, exposure

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15:08:36 1 you had to Mr. Kistner and this Scharmbeck incident?

15:08:40 2 **MS. HUGGINS:** Form.

15:08:40 3 **THE WITNESS:** Yes.

15:08:41 4 **BY MR. RUPP:**

15:08:41 5 **Q.** Okay. No -- nothing else happened

15:08:43 6 between January 1, 2017, when you ended your shift,

15:08:47 7 and the day you were served with process?

15:08:48 8 **MS. HUGGINS:** Form.

15:08:49 9 **THE WITNESS:** No, I don't believe so.

15:08:50 10 **MR. RUPP:** Strike it.

15:08:50 11 There's -- there's been some form

15:08:53 12 objections, and it makes me think that there's

15:08:56 13 something that I'm missing.

15:08:57 14 Maybe, Maeve, you could either tell me

15:08:59 15 what's wrong or I'll just keep asking questions,

15:09:00 16 because I'm asking her if she had any other thing

15:09:01 17 to do with Mr. Kistner between --

15:09:01 18 **MS. HUGGINS:** My --

15:09:03 19 **MR. RUPP:** -- January 1 and the time she

15:09:05 20 was served with process, and there seems to be

15:09:07 21 something wrong with the question.

15:09:08 22 **MS. HUGGINS:** My -- my only objection would

15:09:09 23 be it's very broad and open-ended. I don't know if

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15:09:11 1 you're referring to criminal -- the criminal case  
15:09:13 2 or if you're referring to -- to Mr. Kistner  
15:09:15 3 specifically and --

15:09:15 4 **MR. RUPP:** Well, actually --

15:09:16 5 **MS. HUGGINS:** -- a physical interaction.

15:09:17 6 **MR. RUPP:** -- I meant it to be both.

15:09:17 7 **MS. HUGGINS:** Sure.

15:09:18 8 **MR. RUPP:** But I -- I will clarify.

15:09:20 9 So was there any -- do you know what  
15:09:21 10 happened to his criminal charges?

15:09:23 11 **THE WITNESS:** I believe I went to court  
15:09:25 12 maybe once, but I don't --

15:09:27 13 **BY MR. RUPP:**

15:09:27 14 **Q.** Okay. I wanted to know --

15:09:27 15 **A.** I don't recall what --

15:09:36 16 **Q.** -- that. Yeah.

15:09:39 17 **A.** Yeah. No. I -- I --

15:09:39 18 **THE REPORTER:** Hold on. Hold on. Hold on.  
15:09:39 19 We're kind of losing ourselves here all of a sudden.

15:09:39 20 (Discussion off the record.)

15:09:39 21 **THE WITNESS:** I thought you were referring  
15:09:40 22 to if I had ever been to another call at his --

15:09:43 23 **BY MR. RUPP:**

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15:09:43 1 Q. No. I'll ask you that too.

15:09:44 2 A. That's -- that was my --

15:09:45 3 Q. I'll ask you that too.

15:09:46 4 A. -- take on the question.

15:09:48 5 Q. Did you ever have any other involvement  
15:09:50 6 with Mr. Kistner from January 1, 2017, up through  
15:09:53 7 today's date, that does not pertain to what  
15:09:56 8 happened on January 1, 2017?

15:09:57 9 A. No.

15:09:57 10 Q. Okay. All right. Now, relative to  
15:10:00 11 what happened on January 1, 2017, you think you  
15:10:02 12 went to court.

15:10:03 13 A. I believe I went to court one time.

15:10:05 14 Q. Okay.

15:10:06 15 A. It may have been more than once, but  
15:10:09 16 I don't recall exactly.

15:10:09 17 Q. Did you ever meet with the DA?

15:10:11 18 A. At court I would have, yes.

15:10:13 19 Q. Okay. Just that one time. Okay.

15:10:14 20 A. I think it was one time.

15:10:15 21 Q. And do you know what the purpose of  
15:10:16 22 that appearance was for?

15:10:18 23 A. I believe it was a pretrial hearing.

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15:10:20 1 Q. Okay. You didn't go to his

15:10:23 2 arraignment, I take it.

15:10:24 3 A. No.

15:10:24 4 Q. Okay. So this would have been like

15:10:26 5 a -- a standard sort of meeting with the

15:10:27 6 prosecutor. Everybody gets together and sees what

15:10:30 7 you're going to do?

15:10:31 8 A. In -- in the courtroom.

15:10:32 9 Q. Right.

15:10:33 10 A. So it could be a 30-second

15:10:35 11 conversation.

15:10:37 12 Q. Okay. And just the one time is what

15:10:39 13 you remember?

15:10:39 14 A. From what I remember.

15:10:40 15 Q. And do you know ultimately what was the

15:10:41 16 disposition of the charges against Mr. Kistner?

15:10:44 17 A. I believe it was dismissed. I found

15:10:46 18 that out later.

15:10:46 19 Q. Okay. Do you know why?

15:10:47 20 A. I don't.

15:10:48 21 Q. Did you -- did you follow up on it,

15:10:51 22 or when -- when did -- let me ask you this --

15:10:53 23 strike it -- when did you find out that it had been

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15:10:54 1 dismissed?

15:10:55 2 **A.** Oh, I don't know. I don't know the  
15:10:57 3 time frame.

15:10:57 4 **Q.** Okay. Well, was it before or after you  
15:10:59 5 were served with the summons and complaint and you  
15:11:01 6 knew he was suing you for hitting him with your  
15:11:03 7 SUV?

15:11:05 8 **A.** I believe it was before. I don't --  
15:11:10 9 I -- I know that I was served, it was like a year  
15:11:12 10 and a half later.

15:11:12 11 **Q.** Okay. So would you -- and I guess my  
15:11:13 12 question is: Would you normally sort of get an  
15:11:15 13 update when the DA or the judge just, you know,  
15:11:18 14 dismissed charges?

15:11:19 15 Would they send you like a sort of  
15:11:20 16 a courtesy: Hey, by the way, that incident --

15:11:22 17 **A.** No.

15:11:23 18 **Q.** All right. So how is it that you would  
15:11:24 19 have heard about this one?

15:11:29 20 **A.** I don't remember.

15:11:30 21 **Q.** Well, did you check up on it or  
15:11:31 22 something?

15:11:32 23 Was this of particular interest to you?



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15:11:33 1           **A.**    No, I don't believe I checked up on it.

15:11:35 2           **Q.**    How many arrests do you make in the  
15:11:37 3 course of a month, as a City of Buffalo police  
15:11:39 4 officer, Ms. McDermott? If you can estimate for  
15:11:42 5 me.

15:11:42 6           **MS. HUGGINS:** A time frame.

15:11:42 7           **BY MR. RUPP:**

15:11:44 8           **Q.**    I'm just trying to get a --

15:11:44 9           **A.**    Yeah, I mean, now, as a detective?

15:11:46 10          **Q.**    Well, no, no.

15:11:46 11          **A.**    As a patrol officer? I mean --

15:11:48 12          **Q.**    As a patrol officer, roughly this  
15:11:50 13 time frame, were you -- how many arrests were  
15:11:52 14 you making?

15:11:52 15          **A.**    In a month? In a week?

15:11:54 16          **Q.**    You give me the time frame. I said  
15:11:55 17 a month, but --

15:11:57 18          **A.**    I mean, there -- it could be a few  
15:11:58 19 per week, it could be none per week.

15:12:00 20          **Q.**    Okay.

15:12:01 21          **A.**    I mean, it -- it really --

15:12:03 22          **Q.**    Let's me try --

15:12:03 23          **A.**    There's no --

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15:12:03 1 Q. Let me try a year. I don't want to  
15:12:04 2 pick a period where it was -- where you had  
15:12:06 3 a strange period where four weeks went by and you  
15:12:08 4 didn't arrest anybody.

15:12:09 5 A. Right.

15:12:10 6 Q. In a given year, the five years that  
15:12:12 7 you spent or longer as a patrol officer, how many  
15:12:15 8 arrests would you make in a given year, would you  
15:12:18 9 say?

15:12:18 10 A. In a given year, 40 to a hundred.

15:12:26 11 Q. Okay.

15:12:26 12 A. I mean, it's -- it's --

15:12:28 13 Q. All right.

15:12:28 14 A. Honestly, it --

15:12:29 15 Q. I know it varies. I know it varies,  
15:12:31 16 but I just wanted to get a sense. So it's in the  
15:12:33 17 scores or multiple tens. Okay.

15:12:35 18 So would you follow up on the outcome of the  
15:12:37 19 disposition of -- of those arrests?

15:12:39 20 A. No.

15:12:39 21 Q. Typically?

15:12:40 22 All right. So what was it about the Kistner  
15:12:42 23 matter that you heard about the disposition before

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15:12:46 1 you knew that he was going to sue you?

15:12:47 2 **A.** I don't remember.

15:12:48 3 **Q.** Okay. Do you know how you heard?

15:12:51 4 **A.** No.

15:12:55 5 **Q.** Okay. After January 1st of 2017, aside  
15:12:59 6 from the meeting in court with the DA, did you talk  
15:13:01 7 to any of your fellow officers about what had  
15:13:04 8 happened that day or what Mr. Kistner might do or  
15:13:06 9 anything like that?

15:13:10 10 **A.** I know Officer Velez and I, I'm sure,  
15:13:12 11 have talked about it before. We're pretty good  
15:13:14 12 friends, so we talk about a lot.

15:13:15 13 **Q.** And I just want to clarify. Maybe  
15:13:16 14 I didn't ask. Before you knew you were being sued.

15:13:18 15 I assume that once you got sued -- and  
15:13:20 16 I don't need to know about all these conversations  
15:13:21 17 you had -- you talked to her about the fact you've  
15:13:24 18 all been sued, right?

15:13:25 19 **A.** Yeah. After --

15:13:26 20 **Q.** It had to have come up, right?

15:13:28 21 **A.** Yes. Yes. After being sued, yes.

15:13:29 22 **Q.** Right. So, but before you were sued,  
15:13:31 23 from January '17, to the day before you knew that

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15:13:33 1 he was commencing a lawsuit against you, did you  
15:13:34 2 have any conversations with anybody about this  
15:13:37 3 incident on January 1, 2017?

15:13:40 4 **A.** I could have.

15:13:41 5 **Q.** Okay.

15:13:41 6 **A.** I honestly don't remember.

15:13:43 7 **Q.** Okay. But you -- you -- you wouldn't  
15:13:45 8 have had any particular reason to; is that what  
15:13:47 9 you're telling me?

15:13:47 10 **A.** Right.

15:13:48 11 **Q.** You might have heard something, but it  
15:13:49 12 wasn't like you were saying, gee, I really want to  
15:13:51 13 check up on this particular incident.

15:13:53 14 **A.** Right.

15:13:53 15 **Q.** Okay. All right.

15:14:09 16 All right. I'm just going to ask you --  
15:14:10 17 I think we're getting close to the end, but I'm  
15:14:12 18 going to mark a couple documents and ask you  
15:14:14 19 a couple questions about them.

15:14:16 20 **MS. HUGGINS:** I'm -- I'm not trying to  
15:14:17 21 overstep. I know there was a -- there's also what  
15:14:22 22 was -- has been provided to you for their entire  
15:14:24 23 shift. I don't know if -- because you had asked

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15:14:26 1 some questions that touch on that.

15:14:27 2 **MR. RUPP:** I'm just going -- I'm just going  
15:14:28 3 to go in order. I hope I've got the --

15:14:28 4 **MS. HUGGINS:** That's --

15:14:30 5 **MR. RUPP:** -- right stuff.

15:14:31 6 **MS. HUGGINS:** That's fine.

15:14:31 7 **MR. RUPP:** Okay. Thank you.

15:14:31 8 **MS. HUGGINS:** I just thought that might  
15:14:32 9 alert you too.

15:14:33 10 **MR. RUPP:** Yeah. I'll -- I'm not going to  
15:14:34 11 dwell on too many of these.

15:14:36 12 I do have one other video I do want to show  
15:14:39 13 you, though.

14 **The following was marked for Identification:**

15 **EXH. 16 Buffalo Police shift summary**  
16 **report**

17 **BY MR. RUPP:**

15:15:18 18 **Q.** All right. Ms. McDermott, I'm just  
15:15:20 19 going to show you the police summary report --  
15:15:26 20 shift summary report from the Buffalo Police for  
15:15:28 21 January 1, 2017.

15:15:29 22 I see you're listed, along with Santana and  
15:15:34 23 Schultz and Velez and McHugh, and I see Moriarity

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15:15:40 1 is kind of attached to Schultz there, presumably  
15:15:48 2 because, as you described, he was still in  
15:15:51 3 training, right?

15:15:51 4 **A.** Yes.

15:15:51 5 **Q.** So is this the platoon for your second  
15:15:56 6 shift on that day?

15:15:58 7 Are these all the people who were in your  
15:15:59 8 platoon that day?

15:16:00 9 **A.** No. This is --

15:16:02 10 **Q.** Okay.

15:16:02 11 **A.** It's double-up day, so this is --

15:16:04 12 **Q.** This is -- this is both?

15:16:05 13 **A.** This is both -- some people from both  
15:16:08 14 platoons, yes.

15:16:08 15 **Q.** I see. Okay. So this is -- this is  
15:16:10 16 more than a single platoon --

15:16:12 17 **A.** Yes.

15:16:12 18 **Q.** -- worth of officers.

15:16:13 19 I don't know how many officers work. So how  
15:16:15 20 many -- how many patrol officers, not counting the  
15:16:18 21 lieutenant, would typically be working second shift  
15:16:21 22 in C District in January 2017?

15:16:23 23 **A.** Well, it's -- it's actually first



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15:16:25 1 shift. I know it's a 2, but it's --

15:16:26 2 Q. I thought it was first shift.

15:16:28 3 A. Yeah. It's --

15:16:29 4 Q. Okay.

15:16:29 5 A. So shift 2nd refers to MP2, which is  
15:16:34 6 manpower 2. That's considered day shift. MP4 is  
15:16:38 7 afternoons. MP5 is midnights.

15:16:40 8 Q. Okay. I think I understand that.

15:16:41 9 A. So that's why second shift is --

15:16:45 10 Q. All right.

15:16:46 11 A. Yeah. So this is who worked that day,  
15:16:48 12 not necessarily all of the people who work on both  
15:16:50 13 shifts.

15:16:51 14 Q. Okay. Who worked that day for the  
15:16:53 15 entire day or --

15:16:55 16 A. From 6 a.m. to 4 p.m.

15:16:56 17 Q. That shift. Whatever it's called.

15:16:59 18 A. On that date, yes.

15:17:00 19 Q. Okay. Got it. Okay.

15:17:21 20 All right. I'm going to show you what's  
15:17:24 21 been marked Exhibit 9. It was previously marked.  
15:17:30 22 What is this?

15:17:31 23 A. This is the central booking case history.

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15:17:36 1 Q. Okay. And it lists you as the  
15:17:41 2 arresting officer and several assisting officers,  
15:17:43 3 right?

15:17:44 4 A. Yes.

15:17:44 5 Q. Okay. And you signed it.

15:17:48 6 A. Yes.

15:17:48 7 Q. That is your signature.

15:17:50 8 A. Yes.

15:17:50 9 Q. All right. And it says the officer in  
15:17:57 10 charge of the case -- of a case is the officer with  
15:18:01 11 the most knowledge of the events leading to the  
15:18:04 12 arrest, and is that you?

15:18:06 13 A. Yes.

15:18:06 14 Q. Okay. And it says, the officer in  
15:18:21 15 charge must give a concise and sufficiently  
15:18:23 16 detailed account of the case, with specifics,  
15:18:25 17 pertaining to all officers involved.

15:18:28 18 Did you do that?

15:18:31 19 A. I'm sorry.

15:18:33 20 Q. Reading from the second sentence -- or  
15:18:34 21 the third sentence.

15:18:35 22 A. Oh, okay. I'm sorry. I was reading  
15:18:37 23 along.

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15:18:37 1 Q. The officer in charge must give  
15:18:39 2 a concise and sufficiently detailed account of the  
15:18:42 3 case, with specifics, pertaining to all officers  
15:18:44 4 involved.

15:18:45 5 Did you do that?

15:18:45 6 A. Yes.

15:18:45 7 Q. Okay. Where is the sufficiently  
15:18:49 8 detailed account of the case?

15:18:51 9 A. I believe that would be considered the  
15:18:54 10 charges that are typed up by the report technicians.

15:18:58 11 Q. Okay. So not -- not on this form then?

15:19:02 12 A. No.

15:19:02 13 Q. Okay.

15:19:03 14 A. This goes along with --

15:19:05 15 Q. All right. This has been separated  
15:19:07 16 from a --

15:19:07 17 A. -- cell block --

15:19:07 18 Q. -- sister form of some sort?

15:19:08 19 A. Yes.

15:19:09 20 Q. Okay. All right. Let me show you  
15:19:43 21 Exhibit 5. Can you tell me what Exhibit 5 is?

15:19:55 22 A. Yes. It is the -- what we refer to as  
15:19:58 23 a police report. A 1375 is the handwritten copy.

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15:20:05 1 Q. Okay. So then is that the one I showed  
15:20:07 2 you earlier?

15:20:09 3 A. No. This is -- this is just the typed  
15:20:10 4 version of -- this is considered a police report.  
15:20:13 5 We call it a 1375.

15:20:15 6 Q. Yeah, but you said there's a written  
15:20:17 7 version and a typed version. Did I show you the  
15:20:19 8 written version already, or do I have the written  
15:20:21 9 version?

15:20:21 10 A. I don't know.

15:20:24 11 Q. Do we have a written version of this?

15:20:26 12 A. It's a long form.

15:20:28 13 Q. Like an eight and a half by like seven  
15:20:32 14 or 14 or something?

15:20:33 15 A. Yeah. Yeah.

15:20:33 16 Q. Like longer than a regular --

15:20:37 17 A. Yeah, longer than a regular piece of  
15:20:38 18 paper.

15:20:38 19 Q. Did you -- would you have handwritten  
15:20:39 20 that, as the arresting officer?

15:20:41 21 A. Yes.

15:20:43 22 MR. RUPP: Okay. Maeve, do you know if that  
15:20:47 23 was disclosed?

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15:20:47 1           **MS. HUGGINS:** I do not believe I have  
15:20:48 2 a copy of it in that form. I believe I only have  
15:20:52 3 a typewritten form. We'll do another search.

15:20:55 4           **MR. RUPP:** Okay. Can you --

15:20:55 5           **MS. HUGGINS:** But --

15:20:55 6           **MR. RUPP:** Can you index that for me, Anne?  
15:20:58 7 A document production request?

15:20:58 8           **THE REPORTER:** Yes.

15:20:58 9           **BY MR. RUPP:**

15:21:03 10          **Q.** All right. So let me ask you about the  
15:21:04 11 form we do have. As far as you know, would this be  
15:21:06 12 a typed-up version of what would have been  
15:21:08 13 handwritten?

15:21:08 14          **THE WITNESS:** Yes.

15:21:09 15          **BY MR. RUPP:**

15:21:09 16          **Q.** Okay. When -- and did you prepare the  
15:21:11 17 handwritten form?

15:21:12 18          **A.** I don't know if I would have written it  
15:21:14 19 or Officer Velez.

15:21:16 20          **Q.** Okay. But one of the two of you would  
15:21:19 21 have.

15:21:19 22          **A.** Yes.

15:21:19 23          **Q.** Okay. And so would it be customary

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15:21:22 1 that the typed-up form -- would you type it or --  
15:21:24 2 so who would type it?

15:21:25 3 **A.** It would be typed in the -- it would be  
15:21:29 4 typed most likely in the computer in the vehicle by  
15:21:32 5 one of us.

15:21:33 6 **Q.** Oh. Oh, okay.

15:21:35 7 **A.** So this is -- we -- we have  
15:21:37 8 a handwritten copy and a typed copy, so that say  
15:21:41 9 a complainant wanted to come into the stationhouse  
15:21:44 10 and get a copy of the report.

15:21:45 11 **Q.** Okay.

15:21:45 12 **A.** This is what would be printed out.

15:21:47 13 **Q.** Okay. All right. So -- so my -- that  
15:21:49 14 was kind of my answer to my question, though.

15:21:49 15 **A.** Yes.

15:21:52 16 **Q.** One of the two of you would type it  
15:21:53 17 into your computer in the car.

15:21:55 18 **A.** Correct.

15:21:55 19 **Q.** Okay. And the information at the  
15:21:56 20 bottom seemed to line up with what Officer Velez  
15:22:02 21 had -- had written on the form that I had showed  
15:22:04 22 you earlier that she had signed, right, for the  
15:22:06 23 most part? About intentionally --



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15:22:09 1           **A.**     Yes.

15:22:09 2           **Q.**     -- throwing his body at the car.    Okay.

15:22:12 3           I don't know if I have any -- too many  
15:22:15 4 questions about this form.

15:22:16 5           The two charges are listed there in the  
15:22:18 6 middle.

15:22:19 7           **A.**     Yes.

15:22:20 8           **Q.**     Why -- why is the arrest type crime in  
15:22:23 9 progress?

15:22:24 10          **A.**     So this is also accessed by the report  
15:22:29 11 technician, so when we get down to cell block and  
15:22:32 12 we hand over our paperwork, the cell block -- or  
15:22:35 13 I'm sorry -- the report technician -- and I don't  
15:22:37 14 know the program and that's -- we don't have access  
15:22:41 15 to what they do, but it does affect this in some  
15:22:45 16 way.

15:22:46 17          So that might be why there's -- it says  
15:22:49 18 offenses and then arrest and then the offenses are  
15:22:51 19 listed again, but I don't know how that computer  
15:22:53 20 program works.

15:22:55 21          **MR. RUPP:** All right. Fair enough. Thank  
15:22:57 22 you.

15:23:05 23          Let's mark this then.

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1   **The following was marked for Identification:**

2       **EXH. 17**                           **Information/complaint, two**  
3   **pages**

4           **BY MR. RUPP:**

15:23:50 5           **Q.**   All right. Ms. McDermott, let me show  
15:23:52 6   you what has been marked Exhibit 17. Is that your  
15:23:55 7   signature at the bottom right?

15:23:56 8           **A.**   Yes.

15:23:56 9           **Q.**   And did you sign this document under  
15:24:00 10   penalty of perjury?

15:24:01 11          **A.**   Yes.

15:24:01 12          **Q.**   Okay. Pursuant to penal law Section  
15:24:04 13   210.45?

15:24:06 14          **A.**   Yes.

15:24:06 15          **Q.**   All right. So everything you said on  
15:24:07 16   this form you knew needed to be true and correct or  
15:24:12 17   you could be subject to criminal sanction for --  
15:24:16 18   for perjury, right?

15:24:17 19          **A.**   Yes.

15:24:17 20          **Q.**   Okay. And -- and there's actually two  
15:24:20 21   forms attached under Exhibit 17. The one for  
15:24:23 22   criminal mischief in the third degree and the other  
15:24:26 23   for disorderly conduct, right?

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15:24:29 1           **A.**    Yes.    This is the form that goes along  
15:24:30 2 with the case history.

15:24:31 3           **Q.**    Great.

15:24:31 4           And you signed the second page as well?

15:24:33 5           **A.**    Yes.

15:24:33 6           **Q.**    Also under penalty of perjury?

15:24:35 7           **A.**    Yes.

15:24:35 8           **Q.**    Okay.   Now, did you type this up --  
15:24:38 9 these up, both of them?

15:24:39 10          **A.**    No.

15:24:39 11          **Q.**    Who typed them up?

15:24:40 12          **A.**    A report technician.

15:24:42 13          **Q.**    Okay.   Did you review it before you  
15:24:43 14 signed it?

15:24:44 15          **A.**    Yes.

15:24:44 16          **Q.**    Both cases?

15:24:46 17          **A.**    Yes.

15:24:46 18          **Q.**    Was there anything in either account  
15:24:49 19 that you put your signature to that was inaccurate?

15:24:51 20          **A.**    No.

15:24:52 21          **Q.**    Okay.   And in the first page,  
15:24:57 22 the information for criminal mischief in the  
15:24:59 23 third degree, for damage exceeding \$250, you

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15:25:03 1 wrote: In that the defendant, while at  
15:25:06 2 37 Schmarbeck, did, with intent to damage the  
15:25:10 3 property of another person -- did I read that  
15:25:12 4 properly?

15:25:15 5 **A.** I think I'm -- I'm sorry. I started at  
15:25:17 6 a different place. Can you --

15:25:18 7 **Q.** Yeah. Sure.

15:25:18 8 **A.** Oh, oh, oh. And -- I'm sorry.

15:25:19 9 **Q.** The first sentence.

15:25:20 10 **A.** I thought we were down in the middle of  
15:25:23 11 the page. You're at the top, right under --

15:25:24 12 **Q.** Well, actually, I'm right here, kind of  
15:25:26 13 in the middle.

15:25:26 14 **A.** I'm -- I'm -- I thought you were --  
15:25:26 15 I was reading down here. I --

15:25:27 16 **Q.** That's okay.

15:25:28 17 **A.** I zoned in on the --

15:25:30 18 **Q.** I'll just start over. It's just right  
15:25:30 19 under -- see the charge there, 145.05-2?

15:25:34 20 **A.** Yes.

15:25:34 21 **Q.** And then the title, criminal mischief  
15:25:36 22 in the third degree.

15:25:37 23 **A.** Yes.

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15:25:37 1           **Q.**    You wrote or somebody wrote and you  
15:25:38 2    adopted it with your signature: In that the  
15:25:41 3    defendant, while at 37 Schmarbeck, did, with intent  
15:25:44 4    to damage the property of another person.

15:25:47 5           I'm going to stop there. Your -- your view  
15:25:49 6    is that Mr. Kistner not only threw himself at your  
15:25:54 7    vehicle, but that he intended to damage it.

15:25:56 8           **A.**    Yes.

15:25:57 9           **Q.**    Okay. So -- and what is the basis for  
15:26:00 10   your conclusion in that regard that he wanted to  
15:26:04 11   damage your vehicle, as opposed to damage himself,  
15:26:06 12   or assuming what you say his true, how did you know  
15:26:09 13   that he intended to damage your vehicle?

15:26:12 14          **A.**    That was my perception of the events  
15:26:14 15   that took place.

15:26:15 16          **Q.**    Okay. So you thought he was trying to  
15:26:17 17   damage your vehicle as opposed to himself or both  
15:26:19 18   or what?

15:26:22 19          **A.**    I -- I don't know if he was intending  
15:26:25 20   to injure himself. I perceived that that could be  
15:26:29 21   a very strong possibility. But, yes, I did -- I do  
15:26:33 22   believe that he was intending to damage the -- the  
15:26:34 23   vehicle.

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15:26:35 1           **Q.**     But you -- you could see that somebody  
15:26:37 2     who's intending on hurting themselves might cause  
15:26:40 3     damage to something but not intend that damage.  
15:26:43 4     They're trying to hurt themselves, right?

15:26:45 5           **MS. HUGGINS:**   Form.

15:26:45 6           **THE WITNESS:**   Could be.

15:26:46 7           **BY MR. RUPP:**

15:26:46 8           **Q.**     Okay. Or you could have somebody who's  
15:26:49 9     trying to do damage but doesn't want to hurt  
15:26:52 10    themselves. Would you agree that that's  
15:26:53 11    a possibility?

15:26:53 12          **A.**     It's possible.

15:26:54 13          **Q.**     Okay. But in this case, based on your  
15:26:56 14    recent testimony, it was your conclusion that he --  
15:26:58 15    he may have wanted to hurt himself, but he  
15:27:01 16    definitely wanted to damage your SUV; is that  
15:27:03 17    right?

15:27:03 18          **A.**     That's what I believe.

15:27:04 19          **Q.**     Okay. And that was based on your  
15:27:06 20    perception of seeing him put out his hand and do  
15:27:09 21    the turn and the head thing that we talked about  
15:27:12 22    earlier at length.

15:27:13 23          **A.**     Yes.



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15:27:13 1 Q. Okay. Any other basis for that  
15:27:15 2 statement that you signed under oath and under  
15:27:17 3 penalty of perjury?

15:27:18 4 A. No.

15:27:18 5 Q. Okay. All right. So continuing along:  
15:27:22 6 The City of Buffalo Police Department, and having  
15:27:24 7 no right to do so, nor any reasonable ground to  
15:27:28 8 believe that he had such right, did damage the  
15:27:30 9 property, to wit, driver's side mirror and driver's  
15:27:33 10 side mirror of patrol vehicle, in the amount of  
15:27:36 11 more than \$250.

15:27:38 12 And I've already kind of asked you about  
15:27:39 13 that, right?

15:27:40 14 A. Yes.

15:27:40 15 Q. But by the time -- I'll update my  
15:27:42 16 questions to the time you signed this form drawn up  
15:27:46 17 by the technician, you had no more information  
15:27:49 18 about the value of the alleged damage to vehicle  
15:27:54 19 473 than when I -- than when I asked you that  
15:27:56 20 question before, right?

15:27:58 21 A. Right.

15:27:58 22 Q. Okay. So you still haven't done any  
15:28:01 23 inquiry, not been -- gotten an estimate, not taken

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15:28:04 1 it to the police garage, anything like that?

15:28:06 2 **A.** Correct.

15:28:06 3 **Q.** Okay. Then you say, in that the  
15:28:08 4 defendant did intentionally throw his body into the  
15:28:11 5 driver's side mirror of patrol vehicle 473, causing  
15:28:14 6 the mirror to become dislodged from the vehicle and  
15:28:17 7 also causing the driver's side window to malfunction.

15:28:20 8 And I don't know if I asked you this  
15:28:22 9 specific question, but if -- if those things were  
15:28:24 10 true, you would expect that there would be repair  
15:28:27 11 records relative to that on that vehicle, right?

15:28:29 12 **MS. HUGGINS:** Form.

15:28:29 13 **BY MR. RUPP:**

15:28:30 14 **Q.** Unless it was never fixed, right?

15:28:31 15 **A.** I would expect there to be a record of  
15:28:33 16 it.

15:28:33 17 **Q.** Okay. I'm going to represent to you  
15:28:35 18 that the City of Buffalo has not turned over any  
15:28:37 19 repair records showing that the mirror was fixed or  
15:28:39 20 the driver's side window was fixed. Do you know  
15:28:41 21 why?

15:28:41 22 **A.** I do not know why.

15:28:43 23 **Q.** Okay. All right. The value of said

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15:28:44 1 damage to exceed \$250. The defendant did cause  
15:28:47 2 said damage to the above-mentioned property without  
15:28:49 3 the permission of the owner.

15:28:51 4 And the owner is what? The City of Buffalo?

15:28:54 5 **A.** Yes.

15:28:54 6 **Q.** Okay. All right. Okay. Let's turn  
15:29:02 7 the page, and the next one, for disorderly conduct,  
15:29:04 8 on page 2 of Exhibit 17, reads that that's  
15:29:07 9 a violation, as opposed to a felony.

15:29:10 10 It says, the said defendant, at the  
15:29:13 11 aforesaid time and place, with intent to cause  
15:29:16 12 public inconvenience, annoyance, or alarm, or  
15:29:20 13 recklessly creating a risk thereof, while in  
15:29:23 14 a public place, did use abusive or obscene  
15:29:27 15 language, or made an obscene gesture.

15:29:29 16 We haven't talked about gestures. Did  
15:29:31 17 Mr. Kistner make any obscene gestures that you  
15:29:34 18 remember?

15:29:34 19 **A.** I don't remember.

15:29:35 20 **Q.** Okay. In the time that you saw him  
15:29:37 21 from the moment that he was handcuffed and brought  
15:29:40 22 to his feet by some officers, was -- was he in  
15:29:44 23 handcuffs the entire time?

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15:29:47 1           **A.**     I'm -- I'm sorry.    Could you say

15:29:49 2   that --

15:29:49 3           **Q.**     Did you ever see him out of handcuffs  
15:29:51 4   from the time he was first handcuffed, until you  
15:29:53 5   took him, say, to central booking?

15:29:55 6           **A.**     He was cuffed to the hospital bed with  
15:29:57 7   one hand.

15:29:58 8           **Q.**     Okay.    So was he making gestures with  
15:30:01 9   the other hand or --

15:30:01 10          **A.**     I don't remember.

15:30:02 11          **Q.**     Okay.    So why did you say, did use  
15:30:05 12   abusive or obscene language or made an obscene  
15:30:07 13   gesture?

15:30:08 14          **A.**     That's just the verbiage that is typed  
15:30:10 15   up according to the penal law charge.

15:30:12 16          **Q.**     Okay.    So you don't remember him making  
15:30:13 17   any obscene gestures.   He didn't flip anybody the  
15:30:17 18   bird or give them the finger or anything.

15:30:18 19          **A.**     I don't remember.

15:30:19 20          **Q.**     Okay.    And you wouldn't have charged  
15:30:21 21   him with something you didn't remember, right?

15:30:22 22          **A.**     Right.    That's just -- like I said,  
15:30:25 23   that's the -- the verbiage that the report --

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15:30:27 1 report technicians type up according to the penal  
15:30:28 2 law charge.

15:30:29 3 Q. Well, I know that, but you said it, so  
15:30:32 4 I just want to make sure that you don't recall him  
15:30:34 5 making any gestures.

15:30:35 6 A. I don't remember.

15:30:36 7 Q. Okay. In that the defendant did  
15:30:38 8 intentionally throw his body into the driver's side  
15:30:40 9 mirror, et cetera, and so forth.

15:30:41 10 And that is language that's replicated from  
15:30:46 11 the criminal mischief charge, right?

15:30:49 12 A. Yes.

15:30:49 13 MS. HUGGINS: Form.

15:30:50 14 BY MR. RUPP:

15:30:51 15 Q. All right. So why is that in the  
15:30:52 16 disorderly conduct charge?

15:30:53 17 A. Again, that's -- the report  
15:30:55 18 technicians, that's the way that they type up  
15:30:57 19 charges. That's -- that's how they type it.

15:31:00 20 Q. Okay. So could you have made changes  
15:31:02 21 to this, if you wanted to?

15:31:03 22 A. Yes.

15:31:03 23 Q. Okay. You didn't ask them to make any

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15:31:05 1 changes?

15:31:05 2 **A.** I did not.

15:31:06 3 **Q.** Okay. So was the disorderly conduct  
15:31:09 4 charge, in your view, because he had thrown his  
15:31:12 5 body at the driver's side mirror of your vehicle?

15:31:14 6 **A.** No. The disorderly conduct was  
15:31:16 7 pertaining to the next sentence.

15:31:18 8 **Q.** Okay. All right. So that's in here  
15:31:21 9 kind of extraneously, would you agree?

15:31:24 10 **A.** Again, I don't know the guidelines that  
15:31:27 11 the report -- report technicians type up their  
15:31:29 12 charges.

15:31:30 13 **MR. RUPP:** Okay. All right. I'm going to  
15:31:37 14 ask that this be marked.

15 **The following was marked for Identification:**

16 **EXH. 18** **Fleet management maintenance**  
17 **work order**

18 **BY MR. RUPP:**

15:32:16 19 **Q.** All right. Ms. McDermott, I'm going to  
15:32:19 20 show you Exhibit 18 for identification. First of  
15:32:20 21 all, have you seen a form similar to this one  
15:32:24 22 before in your work as a police officer for BPD?

15:32:27 23 **A.** I have not.



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15:32:28 1 Q. Okay. So you're not really familiar  
15:32:30 2 with this form then.

15:32:31 3 A. Correct.

15:32:31 4 Q. Okay. But do you see that it purports  
15:32:34 5 to relate to unit 473, which is your unit, a Tahoe?

15:32:39 6 A. Yes, I see that.

15:32:40 7 Q. Being a 2014, is that -- does that also  
15:32:44 8 ring a bell?

15:32:45 9 A. Yes.

15:32:45 10 Q. Okay. Being in for service four days  
15:32:48 11 after the incident involving Mr. Kistner. Do you  
15:32:49 12 see that?

15:32:50 13 A. Yes.

15:32:50 14 Q. And indication that there was  
15:32:53 15 apparently work done on the cooling system, some  
15:32:58 16 R/R water pump, and the serpentine belt. Do you  
15:33:02 17 see that?

15:33:02 18 A. Yes.

15:33:02 19 Q. Would you agree with me there's no  
15:33:04 20 references to a mirror or a driver's side front  
15:33:08 21 window?

15:33:09 22 A. Correct.

15:33:09 23 Q. Okay. Do you know of any other repair

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15:33:11 1 records that would verify your under-oath statement  
15:33:15 2 that the driver's side mirror and the -- well, the  
15:33:25 3 driver's side mirror was broken, causing damage of  
15:33:31 4 more than \$250?

15:33:33 5 **A.** I don't know of any other maintenance --

15:33:35 6 **Q.** All right.

15:33:36 7 **A.** -- paperwork, no.

15:33:37 8 **MR. RUPP:** Okay. All right. Let's have  
15:33:48 9 this marked.

10 **The following was marked for Identification:**

11 **EXH. 19** **Buffalo Police dispatch**  
12 **monitor - unit history**  
13 **report**

14 **BY MR. RUPP:**

15:34:34 15 **Q.** All right. Showing you what has been  
15:34:36 16 marked Exhibit 19 for identification, this is --  
15:34:38 17 purports to be the dispatch monitor unit history  
15:34:42 18 report for you, who are referred to as unit C241.  
15:34:46 19 Do you see that?

15:34:47 20 **A.** Yes.

15:34:47 21 **Q.** Okay. And that's Officer Lauren  
15:34:50 22 McDermott. And that -- that number 172768, what is  
15:34:53 23 that?

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15:34:54 1           **A.**     That's my DID number.

15:34:56 2           **Q.**     What does that stand for?

15:34:59 3           **A.**     It's my --

15:35:00 4           **Q.**     Department ID?

15:35:01 5           **A.**     Yes.

15:35:01 6           **Q.**     Okay. And have you had that same

15:35:03 7 number since you joined the BPD?

15:35:05 8           **A.**     Yes.

15:35:05 9           **Q.**     And do you still have it today?

15:35:07 10          **A.**     Yes.

15:35:07 11          **Q.**     Okay. It doesn't change with your

15:35:09 12 position.

15:35:10 13          **A.**     Correct.

15:35:10 14          **Q.**     Okay. So this shows that you were

15:35:12 15 dispatched to Schmarbeck on January 1, 2017, at

15:35:18 16 10:57 a.m. Is that -- do you know if you were

15:35:21 17 there before that or after that or --

15:35:27 18          **A.**     I believe that's when Officer Schultz

15:35:29 19 called it out.

15:35:29 20          **Q.**     Okay.

15:35:31 21          **A.**     When -- yeah.

15:35:32 22          **Q.**     You were -- you already think you were

15:35:35 23 there before that?

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15:35:35 1           **A.**    I believe so.

15:35:36 2           **Q.**    Okay.   And I'm not going to go back  
15:35:38 3 through 4A again.   I'm just going to see if I can  
15:35:41 4 link this up.

15:35:43 5           So this doesn't have the seconds, just  
15:35:47 6 the -- the minutes on it, right?

15:35:48 7           **A.**    Yes.

15:35:49 8           **Q.**    Okay.   And 4A does show you as being  
15:35:53 9 en route/dispatched at the 10:57 mark.

15:35:58 10          **A.**    Along with -- yes.   Yes, it does.

15:36:00 11          **Q.**    Along -- along with Officer Velez,  
15:36:03 12 of course.

15:36:03 13          **A.**    Yes.

15:36:03 14          **Q.**    Okay.   Okay.   And this shows your shift  
15:36:05 15 ending at 6:16, so I guess that answers the question  
15:36:09 16 that we saw on the second page of whether your  
15:36:13 17 overtime that day was -- was just, you know,  
15:36:17 18 a few minute -- 45 minutes after your quitting time  
15:36:20 19 or -- or over two hours after.

15:36:21 20          **A.**    This is, again, based on what dispatch  
15:36:25 21 is logging.

15:36:26 22          **Q.**    Oh, so this would -- so the payroll  
15:36:29 23 would be what governs.

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15:36:31 1           **A.**     Correct.

15:36:31 2           **MR. RUPP:**   Okay.   All right.   Do we have the  
15:36:32 3 payroll?

15:36:33 4           **MR. DAVENPORT:**   No, but we did send a second  
15:36:37 5 document request.

15:36:38 6           Did you get that yet?

15:36:39 7           **MS. HUGGINS:**   I don't believe so.

15:36:40 8           **MR. RUPP:**   All right.   Well, I'll make  
15:36:40 9 a document production request that I'll ask Anne to  
15:36:43 10 index for me for the start and end times of her  
15:36:47 11 shift that day.

15:36:49 12           I don't need to know her pay rate or  
15:36:51 13 anything like that.

15:37:00 14           Okay.   Let's mark this.

15   **The following was marked for Identification:**

16       **EXH. 20                            Notice to defendant of**  
17   **intention to offer evidence**  
18   **at trial**

15:37:52 19           **BY MR. RUPP:**

15:37:52 20           **Q.**     All right.   Let me show you what's been  
15:37:55 21 marked as Exhibit 20 for identification.

15:37:59 22           First of all, do you know if this is the  
15:38:01 23 full document?

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15:38:03 1 It looked to me like it almost needed to  
15:38:06 2 have a second page. There's no signature line. It  
15:38:08 3 seems to end kind of abruptly. Do you know if  
15:38:10 4 there's a second page to this document?

15:38:12 5 **A.** We don't sign these documents.

15:38:15 6 **Q.** Okay. Well, that takes care of  
15:38:17 7 the signature page, but the question still  
15:38:19 8 stands: Do you know whether this is a one-page  
15:38:21 9 document?

15:38:21 10 **A.** I believe this -- I -- I believe this  
15:38:25 11 is the bottom of the page, but I -- I --

15:38:26 12 **Q.** Okay. Fair enough.

15:38:28 13 **A.** Yeah.

15:38:29 14 **Q.** That's how it was produced, so I  
15:38:30 15 just -- I just had a question about it.

15:38:32 16 All right. So we know this is a -- a notice  
15:38:33 17 to the defense of statements that are going to be  
15:38:36 18 used against Mr. Kistner.

15:38:39 19 Did you prepare this form?

15:38:40 20 **A.** I did not.

15:38:41 21 **Q.** Do you know why it says the date is  
15:38:45 22 January 2nd, 2017?

15:38:47 23 Bottom left-hand corner, about an inch and



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15:38:50 1 a half up from the bottom line of text.

15:38:52 2 **A.** I don't know why that date would be on  
15:38:53 3 there.

15:38:53 4 **Q.** Okay. And you've got some of the  
15:39:00 5 statements about Nazis and fascists that you were  
15:39:04 6 telling me about earlier, right?

15:39:05 7 **A.** Yes.

15:39:06 8 **Q.** Okay. But the second paragraph of  
15:39:09 9 things that was said said the defendant did  
15:39:12 10 spontaneously state to Police Officer Velez:  
15:39:17 11 Charge me criminally to cover yourself. You're  
15:39:20 12 scared.

15:39:21 13 Do you see that part?

15:39:22 14 **A.** Yes.

15:39:22 15 **Q.** Okay. So you then knew, after being  
15:39:28 16 placed under arrest and while at ECMC, that  
15:39:30 17 Mr. Kistner believed that you had arrested him to  
15:39:34 18 cover up for your own negligence in operating the  
15:39:37 19 SUV that day. Were you aware of that?

15:39:39 20 **MS. HUGGINS:** Form.

15:39:39 21 **THE WITNESS:** That's what he was saying,  
15:39:41 22 yes.

15:39:41 23 **BY MR. RUPP:**

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15:39:41 1 Q. Okay. So I'm -- I'm not -- I'm not  
15:39:42 2 asking you to agree that it was true. Okay?

15:39:45 3 I'm just asking you if from this quoted  
15:39:48 4 statement -- that's in quotes, right?

15:39:49 5 A. Yes.

15:39:49 6 Q. -- you knew that Mr. Kistner was taking  
15:39:52 7 the position that you had arrested him and charged  
15:39:54 8 him criminally to cover your own negligence in  
15:39:57 9 striking him with the SUV; is that fair?

15:40:00 10 A. Yes.

15:40:00 11 Q. Okay. All right. And in the next  
15:40:02 12 paragraph, again, he is quoted as saying, if you  
15:40:06 13 keep telling your lies so wildly, someone might  
15:40:10 14 believe you. Your story ain't going to fly.  
15:40:13 15 Internal affairs is going to eat your ass alive.

15:40:16 16 And that's a direct quote, right?

15:40:18 17 A. Yes.

15:40:18 18 Q. Now, again, did you put this down or  
15:40:21 19 did Velez put it down?

15:40:22 20 A. It looks like this one was stated to  
15:40:24 21 both of us.

15:40:25 22 Q. Okay. So do you know -- like the --  
15:40:28 23 the typing in the middle, these paragraphs, this is

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15:40:30 1 a form, but somebody typed this in in the middle of  
15:40:33 2 the form or -- or used a computer. Do you know who  
15:40:34 3 did it? Who typed that?

15:40:36 4 **A.** A report technician types it.

15:40:37 5 **Q.** Okay. All right. So from a written  
15:40:39 6 record -- a handwritten record or just from you  
15:40:43 7 orally?

15:40:43 8 **A.** I don't -- I don't remember.

15:40:44 9 **Q.** Okay. Do you remember Mr. Kistner  
15:40:47 10 saying: If you keep telling your lies so wildly,  
15:40:50 11 someone might believe you. Your story ain't going  
15:40:54 12 to fly. Internal affairs is going to eat your ass  
15:40:56 13 alive?

15:40:57 14 **A.** I -- I don't remember --

15:41:00 15 **Q.** Okay.

15:41:00 16 **A.** -- what was said, but I -- I mean,  
15:41:03 17 reading it here, it sounds familiar, but I -- I  
15:41:06 18 don't remember.

15:41:06 19 **Q.** All right. But at least in terms of  
15:41:07 20 what this says, unless this is -- unless this is  
15:41:09 21 false -- you don't have any reason to believe this  
15:41:13 22 is false.

15:41:13 23 **A.** No, it's not false.

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15:41:14 1 Q. Okay. It's true, in fact.

15:41:15 2 A. Yes.

15:41:15 3 Q. Okay. And at ECMC, Mr. Kistner made it  
15:41:18 4 very clear that he thought you were lying, he  
15:41:20 5 thought you were covering up your own negligence,  
15:41:24 6 and he thought internal affairs was going to  
15:41:27 7 investigate you, and that your story was not going  
15:41:29 8 to stand up under scrutiny.

15:41:32 9 You knew that at the time you were at ECMC  
15:41:34 10 the first time, right?

15:41:35 11 MS. HUGGINS: Form. You can answer.

15:41:37 12 MR. RUPP: Strike it.

15:41:39 13 You knew that Mr. Kistner believed you had  
15:41:42 14 made up the story to cover yourself, and you knew  
15:41:47 15 that at ECMC on the first time, January 1, 2017.

15:41:53 16 THE WITNESS: It says at ECMC. I couldn't --  
15:41:56 17 I don't know if it was the first or second time.

15:41:58 18 BY MR. RUPP:

15:41:58 19 Q. Well, now wait a second. You told me  
15:42:01 20 the second time you just pretty much dropped him  
15:42:03 21 off.

15:42:03 22 A. No. I said we don't just drop him off,  
15:42:06 23 but --

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15:42:06 1 Q. Well, okay.

15:42:06 2 A. I mean, I -- like I said --

15:42:08 3 Q. Do you remember him saying anything --

15:42:08 4 A. -- I don't remember --

15:42:10 5 Q. We can go back.

15:42:12 6 Do you remember him saying -- making any  
15:42:13 7 statements like this the second time you took him  
15:42:15 8 to ECMC?

15:42:16 9 A. I don't remember if this was the first  
15:42:18 10 or second time, no.

15:42:19 11 Q. Okay. Well, my question is: Do you  
15:42:21 12 remember him making any statements like this the  
15:42:23 13 second time you took him to ECMC?

15:42:24 14 A. I don't remember.

15:42:25 15 Q. Okay.

15:42:25 16 A. I know the next statement was said the  
15:42:28 17 first time.

15:42:28 18 Q. Okay. And that's where he used the  
15:42:30 19 Nazi term and other language.

15:42:32 20 A. Yes.

15:42:32 21 Q. Okay. And from your recollection of  
15:42:35 22 those statements that Mr. Kistner made, did -- did  
15:42:41 23 he seem to believe that you had struck him with

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15:42:44 1 your SUV and arrested him to cover up your own  
15:42:48 2 negligence?

15:42:48 3 **MS. HUGGINS:** Form.

15:42:49 4 **THE WITNESS:** That's what he seemed to  
15:42:50 5 believe.

15:42:50 6 **BY MR. RUPP:**

15:42:50 7 **Q.** Okay. And did he tell that to not only  
15:42:57 8 officers, but ECMC people as well?

15:42:59 9 **A.** Again, I wasn't in the room when he  
15:43:01 10 spoke with the staff.

15:43:03 11 **Q.** Okay. Well --

15:43:04 12 **A.** We purposely stayed outside of the  
15:43:05 13 room.

15:43:05 14 **Q.** But do you know whether at any time you  
15:43:07 15 were with him he said that in the presence of ECMC  
15:43:10 16 staff?

15:43:12 17 **A.** Yes, because it was relayed to me by  
15:43:14 18 the staff.

15:43:15 19 **Q.** Okay. And did you tell them that: No,  
15:43:17 20 that wasn't true. He attacked my SUV and flung  
15:43:20 21 himself against the mirror to injure himself and  
15:43:24 22 cause damage to it?

15:43:24 23 **MS. HUGGINS:** Form.



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15:43:25 1           **THE WITNESS:** I believe I used the word  
15:43:27 2 threw or thrown.

15:43:27 3           **BY MR. RUPP:**

15:43:27 4           **Q.** Okay.

15:43:28 5           **A.** Not attacked.

15:43:29 6           **Q.** So, basically, it was Mr. Kistner's  
15:43:31 7 word against you police officers who were at ECMC  
15:43:34 8 as to what had happened on Schmarbeck that day,  
15:43:36 9 correct?

15:43:38 10          **A.** That, and based on what -- other things  
15:43:42 11 that he told the staff as well.

15:43:43 12          **Q.** Well, in terms of how the incident had  
15:43:46 13 happened, not in terms of name calling, but in  
15:43:49 14 terms of the incident happening, you have  
15:43:51 15 Mr. Kistner saying you hit him with the SUV and  
15:43:54 16 are lying about it to cover up your own negligence,  
15:43:57 17 and the officers are all saying, no, Mr. Kistner  
15:44:00 18 attacked the SUV.

15:44:00 19           That's basically what's going on at ECMC,  
15:44:02 20 right?

15:44:02 21          **A.** He also told ECMC staff other stories  
15:44:08 22 of what happened.

15:44:08 23          **Q.** Well, where is that written anywhere?

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15:44:11 1           **A.**    I --

15:44:12 2           **Q.**    Well, what other stories did he tell  
15:44:14 3 you -- did he tell them?

15:44:16 4           **A.**    It's in the doctor's report.

15:44:18 5           **Q.**    Okay. Is that the one you told me  
15:44:20 6 earlier about that he slipped on ice?

15:44:22 7           **A.**    That's what he told the doctor.

15:44:23 8           **Q.**    Okay. So on the one hand, he's saying  
15:44:27 9 that you're lying and covering it up and internal  
15:44:30 10 affairs is going to investigate you, and on the  
15:44:33 11 other hand, he's allegedly telling somebody that he  
15:44:35 12 just slipped on ice?

15:44:36 13           **A.**    Yes.

15:44:36 14           **Q.**    Okay. And do you believe he slipped on  
15:44:38 15 ice?

15:44:38 16           **A.**    I don't know.

15:44:39 17           **Q.**    Was there any ice on the street?

15:44:40 18           **A.**    I don't remember.

15:44:40 19           **Q.**    Did you see any in the video?

15:44:43 20           **A.**    The video is very grainy. You can  
15:44:45 21 barely tell --

15:44:46 22           **Q.**    Okay.

15:44:46 23           **A.**    -- who was who.

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15:44:47	1	Q. Do you remember what the temperature
15:44:48	2	was on the day of January 1st, 2017?

15:44:51 3 | **A.** I don't remember.

15:45:32 4 | **MR. RUPP:** Okay. If you can mark that.

15:45:32 5 | **The following was marked for Identification:**

6	EXH. 21	Appearance ticket
---	---------	-------------------

15:45:32 7 BY MR. RUPP:

15:45:57 8 Q. All right. Ms. McDermott, this  
15:46:01 9 obviously is an appearance ticket, right, issued  
15:46:03 10 to James Kistner?

15:46:05 11 | **A.** Yes.

15:46:05 12 Q. My only real question is: Do you know  
15:46:10 13 when this was given to him?

15:46:11 14 Now, it says that it was committed on the  
15:46:14 15 first day of January at 4 p.m., but we know that's  
15:46:19 16 not when the incident happened.

15:46:23 17 Do you see that in the middle? That's

15:46:25 18 clearly wrong, right?

15:46:25 19           **A.**     I believe that's when it was given to  
15:46:28 20     him and not, obviously, when it was committed.

15:46:31 21 Q. Okay. What makes you believe that?

15:46:33 22 I mean, it says committed, so you're --

15:46:35 23 you're -- you're agreeing -- you're assuming, as

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15:46:37 1 I am, that that's incorrect and that somebody put  
15:46:41 2 4 o'clock on, because that seems like close to the  
15:46:43 3 time that he was -- well, what is that close to the  
15:46:45 4 time of?

15:46:46 5 Would he have been given this at central  
15:46:48 6 booking?

15:46:48 7 **A.** He would have. That's not my writing.

15:46:50 8 **Q.** Yeah, I know. That's not your  
15:46:53 9 signature either. It says Lieutenant D --

15:46:54 10 **A.** I believe that's Banaszak.

15:46:56 11 **Q.** Banaszak. Okay. So I knew it wasn't  
15:46:58 12 yours. And -- and you --

15:46:59 13 **A.** Right.

15:46:59 14 **Q.** -- didn't initial it there either.

15:47:01 15 **A.** Correct.

15:47:01 16 **Q.** So I guess were you present when  
15:47:03 17 Mr. Kistner was given the appearance ticket?

15:47:07 18 **A.** I don't remember, but I most likely  
15:47:09 19 would have been.

15:47:09 20 **Q.** So let me ask you this: I know that he  
15:47:12 21 is released from central booking, he's going to  
15:47:14 22 have an appearance ticket, but he's got to go back  
15:47:17 23 to ECMC on the 941, right?

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15:47:20 1           **A.**     Correct.

15:47:20 2           **Q.**     So is he given the appearance ticket to  
15:47:22 3 hold in his little hands at central booking, or is  
15:47:25 4 that given to the ECMC staff so when they let him  
15:47:27 5 go, they hand him the appearance ticket as well?

15:47:30 6           **A.**     Oh, I misunderstood. I thought you  
15:47:32 7 were asking when this was, like, issued.

15:47:33 8                   When it was physically handed to him?

15:47:35 9           **Q.**     Right. When he had it in his hand.

15:47:37 10          **A.**     That, I don't remember.

15:47:38 11          **Q.**     Well, okay. So what is -- what is the  
15:47:40 12 procedure?

15:47:41 13                   I mean, if -- if he's still in police  
15:47:43 14 custody under the 941, would he -- but he's done at  
15:47:48 15 central booking, would he be given the appearance  
15:47:50 16 ticket there and take it with him to ECMC, or  
15:47:53 17 would -- would you give it to him at ECMC, or would  
15:47:56 18 you give it to the ECMC staff to give it to him  
15:47:59 19 when they let him go?

15:48:01 20          **A.**     It is normally filled out, like I said,  
15:48:03 21 when we first get to central booking --

15:48:04 22          **Q.**     Right.

15:48:05 23          **A.**     -- and we give the RT. That's when

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15:48:10 1 it's filled out.

15:48:10 2 Q. Okay.

15:48:10 3 A. But it's not handed at that time,  
15:48:12 4 because they still --

15:48:12 5 Q. That part I -- I guess I have.

15:48:14 6 A. Okay.

15:48:14 7 Q. Okay. So --

15:48:14 8 A. So I don't know when I -- when it was  
15:48:15 9 given to him. I don't know whether it was after  
15:48:17 10 the booking process or when we got to ECMC. That,  
15:48:20 11 I don't remember.

15:48:21 12 Q. Well, I guess my question is: I know  
15:48:22 13 at some point before he was discharged from ECMC,  
15:48:25 14 you and Officer Velez kind of ended your shift and  
15:48:29 15 went home. I think you said he was still there  
15:48:31 16 when you left, right?

15:48:32 17 A. From the -- from the second --

15:48:32 18 Q. Right.

15:48:33 19 A. Yes. Yes.

15:48:33 20 Q. Right. Right.

15:48:33 21 A. Yes.

15:48:33 22 Q. Right. I know the first one you took  
15:48:35 23 him to booking and then you took him -- so I'm --



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15:48:35 1           **A.**     Right.

15:48:37 2           **Q.**     -- obviously talking about the second  
15:48:38 3 one.   You left before he left ECMC, right?

15:48:40 4           **A.**     As far as I know.

15:48:41 5           **Q.**     And nobody came back to give him an  
15:48:43 6 appearance ticket, right?

15:48:44 7           **A.**     No.

15:48:44 8           **Q.**     So before you left, you gave the  
15:48:47 9 appearance ticket either to James Kistner or to  
15:48:50 10 somebody at ECMC to give to him, right?

15:48:52 11           **MS. HUGGINS:**   Form.

15:48:53 12           **THE WITNESS:**   Right.

15:48:54 13           **BY MR. RUPP:**

15:48:54 14           **Q.**     Which is it?

15:48:55 15           **A.**     I don't remember.

15:48:55 16           **Q.**     Okay.   Well, is it protocol or  
15:48:57 17 procedure for you to give an appearance ticket for  
15:49:00 18 somebody to a medical doctor and say, hey, give  
15:49:03 19 this to him when you're ready?

15:49:04 20           **A.**     I -- I don't remember.

15:49:05 21           **Q.**     Well, I'm not asking -- I'm not asking  
15:49:07 22 if you remember.   I'm asking you if an appearance  
15:49:10 23 ticket has to be given to the person charged or you

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15:49:12 1 can give it to somebody else and say, give it to  
15:49:15 2 him?

15:49:16 3 **A.** I -- it is -- I can say, generally, it  
15:49:19 4 is given directly to the person.

15:49:21 5 **Q.** Okay.

15:49:22 6 **A.** In this situation, I -- I don't  
15:49:24 7 remember.

15:49:24 8 **Q.** Okay. So it is possible then, you  
15:49:26 9 think, that you might have given it to a doctor or  
15:49:29 10 somebody at ECMC and said, hey, when -- when you  
15:49:32 11 let him go, give him his appearance ticket?

15:49:34 12 **MS. HUGGINS:** Form.

15:49:35 13 **THE WITNESS:** I don't know.

15:49:36 14 **BY MR. RUPP:**

15:49:37 15 **Q.** Okay. Or it's possible that you gave  
15:49:38 16 it to Mr. Kistner and he had it with him while he  
15:49:41 17 was being processed at ECMC.

15:49:42 18 **A.** Right. I don't remember.

15:49:43 19 **Q.** You just don't know between the two?

15:49:46 20 **A.** I don't remember.

15:49:46 21 **Q.** And there's no policy or procedure that  
15:49:49 22 tells you you have to give the defendant the  
15:49:51 23 appearance ticket.

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15:49:51 1           **A.**    I don't know if there is.

15:49:52 2           **Q.**    Okay. Well, if you don't give the  
15:49:54 3 defendant the appearance ticket, is that a problem  
15:49:56 4 if they don't show up in court?

15:49:58 5           **A.**    I -- it would be a problem if they  
15:50:02 6 didn't show up in court, yes.

15:50:03 7           **Q.**    Right. So would that then suggest to  
15:50:06 8 you that there's a procedure or a protocol with  
15:50:10 9 booking that you give the appearance direct --  
15:50:12 10 ticket directly to the person?

15:50:13 11          **A.**    I -- again, if there is, I don't know.

15:50:15 12          **Q.**    Okay. All right. And you're aware  
15:50:33 13 that Mr. Kistner and his attorneys served  
15:50:35 14 interrogatory requests on the City of Buffalo and  
15:50:37 15 all the defendants, right?

15:50:40 16          **A.**    The -- meaning the -- the suit?

15:50:43 17          **Q.**    Yes.

15:50:43 18          **A.**    Yes.

15:50:44 19          **Q.**    Yes. Yeah.

15:50:45 20          **MS. HUGGINS:** There might just be confusion  
15:50:47 21 on the term interrogatory.

15:50:48 22          **THE WITNESS:** Yes.

15:50:49 23          **MR. RUPP:** I understand fully. I'm not

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15:50:51 1 trying to -- I just want to -- you signed  
15:50:53 2 a verification page pursuant to 28 USC 1746, under  
15:50:57 3 penalty of perjury, that to the best of your  
15:50:59 4 knowledge, the information and belief that the  
15:51:01 5 foregoing answer to first interrogatories to  
15:51:03 6 defendants are true and correct.

15:51:05 7 Did you sign that?

15:51:06 8 **A.** Yes.

15:51:06 9 **Q.** Okay. I'm not even going to mark it,  
15:51:10 10 because I just want to make sure: Did you go  
15:51:11 11 through the interrogatory responses in full before  
15:51:15 12 you signed that verification?

15:51:17 13 **A.** I believe so.

15:51:17 14 **Q.** Okay. So there was nothing in these  
15:51:20 15 interrogatory responses that you did not agree to  
15:51:24 16 or did not think was factually correct when you  
15:51:27 17 signed that.

15:51:27 18 **MS. HUGGINS:** Form. And to be fair,  
15:51:28 19 I supplemented one in a cover letter that was  
15:51:31 20 included with the interrogatories.

15:51:32 21 **MR. RUPP:** Fair enough. I'll just go with  
15:51:34 22 as they existed before the supplement. You had  
15:51:37 23 gone through them. There's nothing in there that

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15:51:39 1 you thought was factually inaccurate.

15:51:41 2 I mean, you can look at it again. I'm just  
15:51:43 3 trying to save time.

15:51:44 4 **THE WITNESS:** I mean, yeah, it's been -- I  
15:51:44 5 mean --

15:51:44 6 **BY MR. RUPP:**

15:51:44 7 **Q.** Okay.

15:51:45 8 **A.** -- it's been a year and a half since --

15:51:45 9 **Q.** Take a look --

15:51:46 10 **A.** -- I --

15:51:46 11 **Q.** Take a look at --

15:51:47 12 **A.** Well, maybe --

15:51:47 13 **Q.** What's the exhibit number?

15:51:48 14 **A.** -- not a year and a half. It's been  
15:51:49 15 a while.

15:51:50 16 **Q.** What's the -- what's the exhibit number  
15:51:52 17 there?

15:51:52 18 **A.** 13.

15:51:52 19 **Q.** Okay. You know, not all of them -- and  
15:51:53 20 the reason I was kind of shying away from having  
15:51:55 21 you read it all, so many of them --

15:51:55 22 **MS. HUGGINS:** Yeah.

15:51:55 23 **BY MR. RUPP:**

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15:51:57 1 Q. -- don't really relate to you  
15:51:58 2 factually. But I'm just talking about the ones  
15:51:59 3 that relate to the facts of Mr. Kistner's arrest  
15:52:01 4 and what happened that day, you believed those to  
15:52:04 5 be true when you signed the verification?

15:52:06 6 A. I'm sorry. This is the one that --  
15:52:08 7 yeah. Yes. This one I more recently looked at.  
15:52:10 8 I was -- I was thinking what was served to me on  
15:52:13 9 the day that it was served. I misunderstood.

15:52:15 10 MS. HUGGINS: I think she's just confused  
15:52:17 11 what is a summons and complaint versus  
15:52:18 12 interrogatories.

15:52:19 13 MR. RUPP: Oh, okay. Yeah. Yeah.

15:52:20 14 MS. HUGGINS: And I don't mean to overstep.  
15:52:22 15 Did -- have we met and discussed interrogatories  
15:52:24 16 with relation to this case?

15:52:25 17 THE WITNESS: Yes.

15:52:25 18 MS. HUGGINS: Have you reviewed  
15:52:26 19 interrogatories and then -- and based on your  
15:52:29 20 knowledge, signed off on them?

15:52:30 21 THE WITNESS: Yes.

15:52:31 22 MS. HUGGINS: Is that -- I'm not trying to  
15:52:32 23 overstep, but I'm --



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15:52:34 1           **MR. RUPP:** You're doing -- you're doing  
15:52:35 2 fine. Keep going.

15:52:35 3           **MS. HUGGINS:** I'm trying to cut through.

15:52:36 4           **THE WITNESS:** Yeah. I misunderstood.  
15:52:39 5 I was -- when you said it, I was thinking the day  
15:52:40 6 I was served.

15:52:40 7           **BY MR. RUPP:**

15:52:41 8           **Q.** I'll tell you exactly why I'm asking.  
15:52:43 9 I just don't want a situation where you tell me  
15:52:45 10 that you -- you really -- something that was in the  
15:52:47 11 interrogatory, you really didn't review it and you  
15:52:49 12 really weren't sure, so when you signed and said it  
15:52:51 13 was factually true and accurate, you must have  
15:52:53 14 missed that one.

15:52:54 15           You read these, you went over them with  
15:52:55 16 counsel, and they were true to the best of your  
15:52:57 17 knowledge.

15:52:57 18           **A.** Yes.

15:52:57 19           **Q.** Okay. And that's why you signed the  
15:52:59 20 form under penalty of perjury.

15:53:01 21           **A.** Yes.

15:53:02 22           **Q.** That's all I really kind of needed.  
15:53:04 23 Thank you.

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15:53:12 1           Okay. All right. So I did promise the  
15:53:16 2 City's attorney that there was another video that  
15:53:20 3 I think was a supplemental disclosure. I'm just  
15:53:22 4 going to show you that. I think it's from  
15:53:24 5 a slightly different camera angle. And we're going  
15:53:28 6 to get that up on the screen in just a second.

15:54:14 7           Okay, Ms. McDermott, I'm going to -- first  
15:54:16 8 of all, just to orient us to what we're looking at  
15:54:19 9 here, we're back to 10:25 a.m., according to the  
15:54:23 10 time stamp -- I'm not asking you to vouch for its  
15:54:26 11 accuracy -- on 1/1/2017.

15:54:29 12           It looks like the C District patrol vehicle  
15:54:35 13 Tahoe 532 is what's shown in that picture; do you  
15:54:39 14 agree with me?

15:54:40 15           **A.**     Yes.

15:54:41 16           **MR. RUPP:** At the 00 point.

15:54:42 17           So I'm going to start it, and I think you're  
15:54:44 18 going to see that vehicle move. All right.

15:54:49 19           (Video clip played.)

15:54:49 20           **BY MR. RUPP:**

15:54:49 21           **Q.**     And do you know one way or the other  
15:54:51 22 whether that was as it's moving away from 33 and  
15:54:54 23 37 Schmarbeck, as was seen in the earlier video,

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15:54:59 1 when Moriarity and Schultz pulled away first?

15:55:02 2 **A.** Yes.

15:55:02 3 **Q.** Okay. Does that seem to be a different  
15:55:05 4 camera angle on the departure of that patrol  
15:55:09 5 vehicle from Schmarbeck --

15:55:11 6 **A.** Yes.

15:55:11 7 **Q.** -- before it started to back up? Okay.

15:55:17 8 All right. And do we now see that vehicle  
15:55:20 9 backing up?

15:55:20 10 **A.** Yes.

15:55:20 11 **Q.** And do we see Officers Moriarity and  
15:55:23 12 Schultz getting out?

15:55:24 13 **A.** Yes.

15:55:24 14 **Q.** And I think you said Moriarity was  
15:55:27 15 driving, so the guy who got out of the driver's  
15:55:30 16 side is this gentleman here?

15:55:31 17 **A.** Yes.

15:55:31 18 **Q.** That's Moriarity.

15:55:33 19 And this gentleman who got out of the  
15:55:36 20 passenger side is Schultz.

15:55:37 21 **A.** Yes.

15:55:37 22 **Q.** Okay. All right. Now, we might have  
15:55:39 23 a little bit of downtime here for a second, so

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15:55:42 1 there's nothing really going on here, so I'm going  
15:55:45 2 to fast-forward it. I don't think any persons come  
15:55:48 3 into the screen for a while.

15:55:49 4 Okay. So now, all right, do we see  
15:55:57 5 Mr. Kistner -- we see Earl in the bottom left?

15:55:59 6 **A.** Yes.

15:55:59 7 **Q.** And do we see Mr. Kistner being walked  
15:56:02 8 back to patrol vehicle 532?

15:56:04 9 **A.** Yes.

15:56:04 10 **Q.** Okay. And which officers are walking  
15:56:07 11 him back there?

15:56:10 12 **A.** That, I -- I believe that is Officer  
15:56:14 13 Moriarity and myself and Officer Schultz, and then  
15:56:17 14 Officer Schultz breaks away.

15:56:19 15 **Q.** Okay.

15:56:19 16 **A.** So then that is Officer Schultz, and  
15:56:24 17 then with Mr. Kistner is still myself and Officer  
15:56:26 18 Moriarity.

15:56:26 19 **Q.** Which one are you? Closest to the  
15:56:29 20 camera or furthest away?

15:56:30 21 **A.** I'm the closer of the two.

15:56:33 22 **Q.** Okay. To -- to the vantage point of  
15:56:36 23 the viewer. Okay.

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15:56:36 1           **A.**     Yes.    So between the other two  
15:56:38 2 officers, I guess.

15:56:39 3           **Q.**     Gotcha.   Okay.

15:56:39 4           So he's being put in the driver's side rear  
15:56:43 5 seat; is that correct?

15:56:44 6           **A.**     Yes.

15:56:44 7           **Q.**     Okay.   And I think you told me that was  
15:56:46 8 a caged enclosure?

15:56:48 9           **A.**     Yes.

15:56:48 10          **Q.**     So he's put in there.   Is the door  
15:56:50 11 closed?

15:56:51 12          **A.**     Yes, I believe so.

15:56:52 13          **Q.**     Okay.   So he can't get out.

15:56:54 14          **A.**     Correct.

15:56:54 15          **Q.**     All right.   So now we see officers  
15:56:56 16 coming up to Earl, and we talked about this  
15:56:59 17 a little bit before, and I'm just going to play it.

15:57:10 18                I guess I backed up too far.

15:57:12 19                So Schultz gestures towards Earl and  
15:57:19 20 approaches him?

15:57:20 21          **A.**     Yes.

15:57:20 22          **Q.**     Okay.   We've seen some of this from  
15:57:24 23 another angle.

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15:57:25 1 Earl is walking away. Schultz grabs him.

15:57:27 2 Do you know why?

15:57:27 3 **A.** I don't.

15:57:28 4 **Q.** Okay. Now, Earl appears to be on the  
15:57:31 5 phone, right?

15:57:32 6 **A.** It appears so.

15:57:33 7 **Q.** Does Schultz take his phone?

15:57:36 8 Why are they doing this to him?

15:57:37 9 **A.** I don't know.

15:57:37 10 **MS. HUGGINS:** Form.

15:57:38 11 **BY MR. RUPP:**

15:57:38 12 **Q.** Okay. Did you -- did you intervene or  
15:57:41 13 ask them to stop?

15:57:43 14 **A.** I don't remember.

15:57:44 15 **Q.** Had the young man done anything?

15:57:47 16 **A.** I don't remember.

15:57:47 17 **Q.** Okay. Well, you're standing right  
15:57:49 18 there. Did you think it was appropriate for the  
15:57:53 19 officers to rough up Earl?

15:57:55 20 **MS. HUGGINS:** Form.

15:57:55 21 **BY MR. RUPP:**

15:57:56 22 **Q.** We'll watch it again.

15:58:25 23 Did you see Officer Schultz take Earl's



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15:58:28 1 telephone away from him?

15:58:29 2 **A.** I saw him take something.

15:58:30 3 **Q.** Do you know why he did that?

15:58:31 4 **A.** I don't.

15:58:37 5 **Q.** Is that proper police -- police  
15:58:38 6 procedure?

15:58:38 7 **A.** It would depend on the situation.

15:58:39 8 I -- I don't remember --

15:58:40 9 **Q.** What about this situation?

15:58:41 10 **A.** I don't remember what the conversation  
15:58:43 11 was.

15:58:43 12 **Q.** Okay. Do you know why they start  
15:58:46 13 pulling and pushing Earl?

15:58:47 14 **A.** I don't.

15:58:48 15 **Q.** You were standing right there, right?  
15:58:50 16 You were watching this?

15:58:51 17 **A.** Yes.

15:58:51 18 **Q.** Do you intervene at any time and tell  
15:58:55 19 them to stop?

15:58:55 20 **A.** I don't remember.

15:58:57 21 **Q.** Officer Schultz was the most senior  
15:58:59 22 officer on the scene, right?

15:59:01 23 **A.** Yes.

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15:59:22 1 Q. Do you know why Officer Schultz went  
15:59:25 2 back to the SUV?

15:59:25 3 A. I don't.

15:59:27 4 Q. Do you know if he was running Earl's  
15:59:29 5 license?

15:59:29 6 A. He may have been.

15:59:31 7 Q. Would that be police procedure?

15:59:35 8 A. It might be. I mean, I don't --

15:59:38 9 Q. To see if he has a warrant or  
15:59:39 10 something?

15:59:40 11 A. I -- I don't know why he would have, if  
15:59:42 12 that's what he was even doing.

15:59:50 13 Q. Was Earl detained at this point, or was  
15:59:52 14 he free to go?

15:59:54 15 A. From what I'm watching, it appears he's  
15:59:56 16 free to go, but I don't remember.

15:59:59 17 Q. Do you know if he had been given back  
16:00:00 18 his possessions?

16:00:01 19 A. I don't know.

16:00:03 20 Q. Do you know why they were taken from  
16:00:04 21 him?

16:00:05 22 A. I do not.

16:00:16 23 Q. Do you know if at this point or by this

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16:00:17 1 point Mr. Kistner had complained of being injured?

16:00:20 2 **MS. HUGGINS:** Form.

16:00:20 3 **THE WITNESS:** I don't remember.

16:00:21 4 **BY MR. RUPP:**

16:00:23 5 **Q.** Do you know why it took -- why there  
16:00:25 6 was this delay in taking him to the hospital?

16:00:27 7 **A.** I don't know.

16:00:30 8 **Q.** Do you think he should have been taken  
16:00:32 9 to the hospital?

16:00:33 10 **A.** I don't remember what the conversation  
16:00:36 11 was or if he had complained of injury yet. I don't  
16:01:16 12 remember.

16:01:16 13 **Q.** Do you remember anything Earl said?

16:01:18 14 **A.** I don't.

16:01:20 15 **Q.** Do you remember anything that was said  
16:01:21 16 by anyone to Earl?

16:01:22 17 **A.** I don't remember.

16:01:23 18 **Q.** Did you speak to Earl?

16:01:26 19 **A.** I may have. I don't remember.

16:01:29 20 **Q.** Okay. Did you see on officer returning  
16:01:34 21 some items to Earl?

16:01:34 22 **A.** Yes.

16:01:35 23 **Q.** Do you know which officer that was?

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16:01:36 1           **A.**     Could you go back? I think it was  
16:01:39 2 Moriarity walked back from the patrol vehicle.  
16:01:43 3           Moriarity.  
16:01:52 4           **Q.**     Is that the one with the hat?  
16:01:54 5           **A.**     Yes.  
16:01:54 6           **Q.**     Okay. Are you in this picture?  
16:02:17 7           **A.**     I think that's Officer Velez.  
16:02:20 8           **Q.**     Do you know what's being discussed?  
16:02:22 9           **A.**     I don't.  
16:02:30 10          **Q.**     Who's that gesturing and looking back  
16:02:34 11 south on Scharmbeck?  
16:02:36 12          **A.**     I think it's Officer Velez.  
16:02:46 13          **Q.**     Did you ever see Officer Moriarity  
16:02:48 14 writing something down? Writing a note?  
16:02:53 15          **A.**     You'd have to play it again.  
16:02:56 16          **Q.**     Well, do you remember seeing that at  
16:02:57 17 the scene?  
16:02:58 18          **A.**     I don't remember it from that day.  
16:03:03 19          **Q.**     Do you remember having any -- any  
16:03:05 20 conversations with anybody in the home at  
16:03:08 21 37 Scharmbeck?  
16:03:12 22          **A.**     I don't believe I ever went inside.  
16:03:13 23          **Q.**     Well, I didn't ask you that.

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16:03:15 1 Did anybody call out the window or purport  
16:03:20 2 to speak to the officers on the street from  
16:03:22 3 37 Scharmbeck?

16:03:23 4 **A.** I believe a woman yelled out the  
16:03:25 5 window, but I don't remember if I was the one that  
16:03:26 6 responded or not.

16:03:27 7 **Q.** Do you remember what she said?

16:03:28 8 **A.** I don't.

16:03:30 9 **Q.** Do you remember anybody saying that you  
16:03:32 10 were on camera?

16:03:34 11 **A.** I remember knowing that there was  
16:03:37 12 a camera. I just don't remember how that  
16:03:40 13 information was told to me. If she yelled that or  
16:03:43 14 if someone else said it that day, I -- I don't  
16:03:46 15 remember, but I remember it being told to me.

16:03:51 16 **Q.** Do you have an opinion about  
16:03:53 17 surveillance cameras?

16:03:56 18 **A.** No.

16:04:14 19 **Q.** In the upper left-hand corner, we see  
16:04:16 20 some officers. Do you know what's being discussed?

16:04:18 21 **A.** No.

16:04:19 22 **Q.** Do you have any recollection, from the  
16:04:20 23 time Mr. Kistner was placed in the 532 patrol

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16:04:24 1 vehicle, what any officers were discussing with  
16:04:26 2 each other?

16:04:27 3 **A.** No.

16:05:02 4 **Q.** Do you know why Mr. Kistner is not  
16:05:04 5 being transported to the hospital?

16:05:05 6 **A.** I don't.

16:05:08 7 **Q.** Is this type of delay usual?

16:05:12 8 **MS. HUGGINS:** Form.

16:05:13 9 **THE WITNESS:** It would depend on the  
16:05:15 10 situation.

16:05:16 11 **BY MR. RUPP:**

16:05:17 12 **Q.** Would the situation be that you were  
16:05:19 13 all talking to each other to get your stories  
16:05:20 14 straight?

16:05:21 15 **MS. HUGGINS:** Form.

16:05:21 16 **THE WITNESS:** No.

16:05:56 17 **BY MR. RUPP:**

16:05:56 18 **Q.** Are you shown in the picture as it  
16:05:58 19 reads at 10:34:12?

16:06:00 20 **A.** Am I shown?

16:06:01 21 **Q.** Yeah.

16:06:01 22 **A.** I'm not sure if that's -- I think that  
16:06:03 23 might be Officer Velez up in the left-hand corner.

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16:06:09 1 I can't tell if that's her or me.

16:06:09 2 **Q.** Okay.

16:06:15 3 **A.** I think that's Officer Velez.

16:06:53 4 **MR. RUPP:** All right. Thank you,

16:06:54 5 Ms. McDermott. I have no further questions.

16:07:11 6 **MS. HUGGINS:** I have no questions.

16:07:13 7 **MR. RUPP:** Okay. We're done.

8 (Proceedings of 2/19/20 were then concluded  
9 at 4:07 p.m.)

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1 I hereby CERTIFY that I have read the  
2 foregoing 400 pages, and that except as to those  
3 changes (if any) as set forth in an attached errata  
4 sheet, they are a true and accurate transcript of  
5 the testimony given by me in the above entitled  
6 action on February 19, 2020.

7  
8  
9 -----  
10 LAUREN McDERMOTT  
11  
12  
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18  
19  
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22  
23

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE )

4

5 I DO HEREBY CERTIFY as a Notary Public in and  
6 for the State of New York, that I did attend and  
7 report the foregoing deposition, which was taken  
8 down by me in a verbatim manner by means of machine  
9 shorthand. Further, that the deposition was then  
10 reduced to writing in my presence and under my  
11 direction. That the deposition was taken to be  
12 used in the foregoing entitled action. That the  
13 said deponent, before examination, was duly sworn  
14 to testify to the truth, the whole truth and  
15 nothing but the truth, relative to said action.

16

17

18

19

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ANNE T. BARONE, RPR,  
Notary Public.

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23